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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,089	01/20/2004	Steven J. Chambers	135/26	1406
27612	7590	01/13/2006	EXAMINER YEAGLEY, DANIEL S	
AVERILL & VARN 8244 PAINTER AVE. WHITTIER, CA 90602			ART UNIT 3611	PAPER NUMBER

DATE MAILED: 01/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/761,089	Applicant(s) CHAMBERS, STEVEN J.	
	Examiner Daniel Yeagley	Art Unit 3611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-16 and 18-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-16 and 18-22 is/are rejected.
- 7) ☒ Claim(s) 3 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>9/29/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 11 and 18 are objected to because of the following informalities:

Regarding Claim 11 , line 2, the term “*the* radius” lacks sufficient antecedent basis.

Regarding Claim 18 , line 2, the term “*the* two wheel mode” lacks sufficient antecedent basis.

Appropriate corrections are required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 18 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 18, depend from canceled claim 17.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

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5. Claims 1, 4, 5, 11, 12, 14 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Levine '193.

Levine shows a powering assembly comprising a hand truck, wherein at least a portion of the powering assembly resides outside a radius of the wheels (figure 1) which includes side plates that define a protective profile for the powering assembly (outer edges of mounting 54 and element 52) which further includes slides 58 attached to the side plates (figure 2) that would facilitate sliding of the hand truck over obstacles and wherein the powering assembly further includes a transaxle 22 driven by an electric motor 26 that is differentially connected to right and left axles 14 attached to wheels 10, such that the wheels are connected to the axles so the wheels may rotate freely on the axles *or* may be fixed to the axles (figure 3, column 3) and includes a power source 56 connected to a motor controller 36 and the motor, such that they fit substantially within an outer frame width of a frame 22 (figure 4) that is between approximately ten to eighteen inches, and wherein the hand truck further includes a speed control attached to the handle and includes a power on/off indicator residing proximal to the speed control which includes a hi/low speed switch (potentiometer) (column 2, line 25-34).

6. Claims 1, 4, 5, 11, 12 and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Mitchell '236.

Mitchell shows a powering assembly comprising a hand truck having a transaxle driven by an electric motor differentially connected to right and left axles attached to wheels, wherein a power source is connected to a motor controller and the motor, such that they fit substantially within an outer frame width (figure 2, column 2) which includes side plates that define a

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protective profile for the powering assembly with slides (bottom edge of side rails), and wherein the outer frame width is between approximately ten and eighteen inches and clearly capable of being approximately twelve inches, the hand truck further includes a speed control attached to handles, and a power on/off indicator residing proximal to the speed control (column 3-4), wherein the wheels are at least fixedly connected to the axles as broadly claimed and wherein at least a portion of the powering assembly resides outside a radius of the wheels (figure 2 and 9).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 6 – 10 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitchell '236.

Mitchell disclosed a powering assembly comprising a hand truck with a transaxle driven by an electric motor (drill), wherein the transaxle and motor may be removed from the hand truck by releasing four fasteners (figure 5) and wherein the motor obviously has a horsepower rating which is inherently capable of being between approximately one quarter and one half horsepower but failed to distinctively disclose a horsepower rating of the motor and failed to disclose a hi/low speed switch for selecting a high speed mode or a low speed mode and failed to disclose a power source comprising two twelve volt batteries.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized a motor with a horsepower between approximately one quarter and one half horsepower as claimed, since that is the common horsepower rating of most retail available drills and therefore easily obtainable and readily available and would only be dependent upon users preference and its intended use to adequately handle the load, and further would have been obvious to one of ordinary skill in the art to have utilized a (drill) motor equipped with a common two speed hi/low switch in order to selectively enhance the drive torque capabilities of the motor to prevent overloading the motor dependent upon the load encountered and speed desired, as is well known in the motor power field, and would have been further obvious to one of ordinary skill to have provided the motor with a second battery or larger power source in order to provide more power to the motor and extend the operating time to reduce e down time.

9. Claims 6 – 9 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levine '193.

Levine disclosed a powering assembly comprising a hand truck driven by an electric motor, wherein the motor obviously has a horsepower rating which is inherently capable of being between approximately one quarter and one half horsepower with a speed range using a potentiometer but failed to distinctively disclose a horsepower rating of the motor with a speed range of approximately two to four mph and failed to disclose a power source comprising two twelve volt batteries.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized a motor with a horsepower rating of between approximately one quarter and one half horsepower as needed, since it is a common horsepower rating of most retail available motors and therefore easily obtainable and readily available and would only be dependent upon users preference and its intended use to adequately handle the load and speed range desired and further would have been obvious to one of ordinary skill in the art without undue experimentation to have utilized a motor rating which would be of an adequate horsepower and speed ratio to achieve a desired output and load to drive the vehicle, as is well known in the motor power field, and would have been further obvious to one of ordinary skill to have provided the motor with a number of batteries or a larger power source in order to provide more or sufficient power to the motor to prevent damage to the motor and/or extend the vehicles' operating time in order to reduce down time.

10. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Levine '193 in view of Law et al '166.

Levine as stated above shows a powering assembly comprising a hand truck having side plates and slide but failed to disclose slides fabricated from polytetrafluoroethene

Law shows a hand truck having a side plates which includes slides attached to the side rails to facilitate sliding the hand truck over obstacles (figure 1-2, column 2-3).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the slide portion of hand truck frame of Levine with slides fabricated from a smooth protective material fabricated from a plastic resin material such as nylon or PTFE

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such like the sliding material taught by Law in order to provide a more enhanced smoother sliding surface with added protective qualities to the hand truck to minimize risk of damaging the slide portion or an obstacle the hand truck is being slid over.

11. Claims 20 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicants' prior art figures 2A, 2B and 3 in view of Levine '193.

Applicants' prior art figures 2 – 3 show a convertible framed hand truck comprising a convertible frame residing parallel to a frame that defines an outer frame width, the frame having a nose end which is proximal to a floor surface when the hand truck is used in a two wheel mode with left and right hand truck wheels attached to left and right axles residing proximal to the nose end and a handle end opposite the nose end, and is configurable to reside substantially perpendicular to the frame and connected to the frame proximal to the handle end of the frame, when in a platform mode which further includes right and left caster wheels attached to the convertible frame, wherein the control handle 26 is attached opposite the caster wheels but lacked the power source connected to an electric motor attached proximal to the nose end of the frame within the outer frame with a speed control attached to the convertible frame opposite the caster wheels.

Levine shows a powered hand truck, wherein a power source is connected to an electric motor attached proximal to the nose end of the frame within the outer frame and includes a speed control 36 attached to the handle of the frame.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the convertible hand truck frame of the prior art with a speed

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controlled motor driven wheel arrangement such as suggested by Levine motorized hand truck simple to enhance the use of the prior art convertible hand truck by utilizing a motor controlled means to more conveniently propel the hand truck in order to reduce fatigue and increase safety by providing a motorized hand truck apparatus which is easily controlled and employs good engineering standards and provide a better performance as taught by Levine (column 1-3).

12. Claims 19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levine '193 in view of Ohba '104.

Levine as stated above shows a powered hand truck comprising a frame with an outer frame width of approximately ten to eighteen inches and left and right wheels attached to differentially connected axles driven by an electric motor which included a speed control communicating with a motor controller electrically connected to the motor but failed to disclose a wireless communication connection.

Ohba shows a motorized hand truck (figure 1) that employs a wireless communication connection means between the speed control and the motor controller (column 1-8).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the control means of Levine motor powered hand truck with an additional control means such as a wireless communication control apparatus as suggested by Ohba in order to provide an improved electronic control system for remotely controlling the movement of the hand truck which moves more efficiently and accurately so as to conserve time and battery power as well as to avoid colliding with objects, including the operator for better safety and convenience as taught by Ohba.

Response to Arguments

13. Applicant's arguments filed 11/2/05 have been fully considered but they are not persuasive. Mitchell '236 as stated above clearly discloses the feature of a powering assembly with wheels connected to the axles so that the wheels are fixed to the axles as broadly claimed in instant claim 1. Applicant should note that the claim limitation of the term "or" only requires the prior art to perform one or the other, not both and therefore Mitchell is still readable on the claim as broadly read. Furthermore, Applicant's arguments with respect to claims 1, 4-16 and 19-22 have been considered but are moot in view of the new ground(s) of rejection. Levine is also cited as better disclosing applicant's invention as now claimed as stated above.

Allowable Subject Matter

14. Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

15. Claim 18 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Mitchell, Jr. '241 and Meyers et al '835 show powering hand truck assemblies.

Mauch '595 and Bowie, Jr. et al '8/88 show a convertible two wheel and platform mode hand truck.


18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Yeagley whose telephone number is (571)-272-6655. The examiner can normally be reached on Mon. - Fri; first Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley D. Morris can be reached on (571) - 272 - 6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

D.Y.


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